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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK ALEX MEDRANO,

Defendant and Appellant.

E055978

(Super.Ct.No. FVI1100400)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jules E. Fleuret,
Judge. Affirmed.

Patricia Ihara, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On February 22, 2011, a complaint charged defendant and appellant Frank Alex Medrano with (1) carrying a loaded firearm by a gang member under Penal Code¹ section 12031, subdivision (a)(2)(C) (count 1); possession of a firearm by a felon with a prior under section 12021, subdivision (a)(1) (count 2); and (3) street terrorism under section 186.22, subdivision (a) (count 4). As to counts 1, 2, and 4, the complaint also alleged a prior strike offense under section 1170.12, subdivisions (a) through (d), and section 667, subdivisions (b) through (i); and three prison prior convictions under section 667.5, subdivision (b). As to counts 1 and 4, the complaint further alleged a prior serious felony conviction under section 667, subdivision (a)(1).

On August 30, 2011, defendant pled guilty to count 4 and admitted the strike allegation, in exchange for a stipulated sentence of the upper term of three years, doubled for a total term of six years. The remaining charges and allegations were dismissed.

On November 17, 2011, defendant requested to withdraw his guilty plea. The trial court appointed a conflict panel attorney to represent him.

On March 23, 2012, after hearing defendant's motion to withdraw his plea, the trial court denied the motion. Thereafter, the court sentenced defendant to the stipulated sentence of six years.

On April 3, 2012, defendant filed a timely notice of appeal and requested a certificate of probable cause. The court denied the request for a certificate of probable

¹ All statutory references are to the Penal Code unless otherwise specified.

cause. On April 12, 2012, defendant filed an amended notice of appeal. The notice indicated that the appeal was based on the sentence or matters occurring after the plea.

STATEMENT OF FACTS²

I. Factual Background

On February 17, 2011, at 10:41 p.m., San Bernardino County Deputy Sheriff J. Rangel and his partner were in an unmarked patrol car, traveling northbound on Arrowhead Lake Road. A vehicle in front of them crossed into oncoming traffic before slowing down to make a right-hand turn. The driver did not use a turn signal, and the rear brake lamp was not working. Deputy Rangel initiated a traffic stop.

A woman, Malisha Helm, was in the driver's seat and defendant was in the front passenger seat. Deputy Rangel's partner approached the driver's side and asked both occupants for identification. The partner told defendant to hand his identification to Deputy Rangel who was on the passenger side of the car. Defendant had to open the car door to hand his identification to Deputy Rangel because the car window did not open.

The patrol car's spotlights and headlights partly illuminated the interior of the car. Deputy Rangel used his flashlight to look inside the car; he spotted a handgun just below the passenger's seat near defendant's right leg. The gun was chrome with a pearl white handle, a two-shot Derringer style handgun loaded with two .38 special rounds. The hammer was cocked back ready to be fired.

² Since defendant pled guilty, the parties stipulated that the discovery in the case contained the factual basis of the plea.

Both officers drew their weapons. Both Helm and defendant cooperated with the officers' demands and got out of the car. The officers handcuffed and arrested both Helm and defendant. Sheriff's dispatch advised Deputy Rangel that defendant was currently an armed and dangerous parolee at large.

Deputy Rangel read defendant his *Miranda*³ rights and asked him about the gun. Defendant told the deputy that he did not know the gun was there and that it was not his. Defendant said that he met Helm a week prior through some "homies" and "he made her his girlfriend." She came to pick defendant up from his mother's house just three minutes earlier. They were going to see some friends in Victorville. Defendant denied that the gun belonged to Helm.

Defendant was a prior documented Chino Sinner gang member; he also admitted his membership in the gang. His moniker was Joker. Defendant told Deputy Rangel that he does not "gang bang" anymore. The deputy mentioned that Helm was a documented affiliate of the Eastside Victoria gang, implying that defendant and Helm were in rival gangs. Defendant said that he knew who Helm used "to run with," but that she was "cool."

Helm told Deputy Rangel that defendant was not her boyfriend but was just a friend. She met him a month ago through "one of the homies." She confirmed that she picked him up a couple of minutes before the police pulled her over; they were on their way to visit friends in Victorville. She denied that the gun in the car belonged to her; she

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

did not know anything about the gun. She had been driving her car all day to different places and probably would have seen the gun had it been there. Helm said she used to run with Eastside Victoria, but has not seen anyone from that gang since 2007.

Defendant has a big “Sureno” tattoo on his back. A field identification gang card documenting the contact on the day of the arrest indicates that defendant had “walked in” the Chino Sinners gang when he was 10 years old and had never been jumped out. He was in good standing, but not active.

II. Plea Agreement

On August 30, 2011, defendant pled guilty to street terrorism, and admitted a prior strike with a stipulated sentence to the upper term of three years, doubled under the three strikes law, for a total term of six years. On the form, defendant initialed the box indicating that no one had used any duress or undue influence of any kind to convince him to plead guilty. Defendant initialed the box indicating that he was not under the influence of any drugs or medicine which could interfere with his ability to understand what he was doing. Defendant also initialed the box indicating that he had sufficient time to consult with counsel.

During the hearing, defendant agreed that he read and understood his rights that were printed on the plea form and waived those rights. When the trial court questioned defendant whether he had sufficient time to talk to counsel about pleading guilty and admitting the strike, defendant stated that he needed more time to consult with his

attorney. The court, therefore, paused the proceeding to give defendant more time with his attorney.

After the proceedings resumed, the court asked defendant if he had any questions or concerns that he wished to ask the court about the plea. Defendant responded, “No,” and pled guilty to the crime of street terrorism. When the court asked defendant if he admitted the prior strike allegation, proceedings were paused once more at defense counsel’s request. After the proceedings resumed, defendant admitted that he committed a felony assault in 1999, a prior serious or violent felony.

III. Postplea Proceedings

On October 27, 2011, at a postplea hearing, defendant, through counsel, requested to withdraw his guilty plea. The prosecutor informed the court that she believed that this request was a “stall tactic” because defendant wanted a continuance of the sentencing hearing. When asked whether defendant wanted a continuance or to withdraw his plea, defendant stated that he really wanted a continuance because his mother was sick with heart problems. Defendant explained that four days after the court took his guilty plea, he told defense counsel that he wanted to withdraw his plea. However, if defendant were able to get a continuance of his sentencing hearing date, he was “more than willing to just go with [the plea.]” The trial court granted a continuance until November 17, 2011.

IV. Motion to Withdraw the Plea

Defendant moved to withdraw his plea on the grounds that defense counsel pressured him to take the deal and misadvised him that he could not back out of the deal

after he had signed the written plea form. Defendant claimed that his counsel was ineffective for failing to make any effort to investigate whether there was exculpatory evidence, such as fingerprints or a witness. Moreover, at the time of his plea, defendant was taking a pain medication.

At the hearing on the motion, defense counsel testified that defendant had been indecisive after taking the plea. The morning of the plea proceeding, counsel spoke with defendant about going through with the plea for at least an hour. Defendant went “back and forth” for most of the day. Counsel informed defendant that he was annoying the trial court.

During one of the off-the-record discussions, defense counsel told defendant, “We’re in the middle of it right now,” but did not think he said, “You can’t stop the plea now.” Defendant told counsel that he did not want to go through with the plea during a pause in the proceedings, but when the plea was taken, counsel did not recall hearing defendant say that. Ultimately, defendant decided to go ahead with the plea agreement.

In trial counsel’s opinion, defendant “definitely understood his constitutional rights,” and was “definitely a knowledgeable defendant about how the system works.” If defendant did not want to take the plea, he would have refused the plea. Defense counsel said he never told a client that he had to go through with a plea if he did not want to. Counsel was confident that defendant entered the plea freely, voluntarily, and intelligently.

Defendant's father was in the courtroom during the plea proceedings. During or just before the first recess in the proceeding, he heard his son say that he did not want to take the plea and heard defense counsel tell his son that they were in the middle of the plea and could not go back at this point. During the second recess in the proceeding, defendant's father guessed that they were talking about the plea but could not hear what was said. Because the father was advising his son not to take the deal, the father did not believe defendant told defense counsel that he wanted to go through with it.

Defendant testified that he signed the plea form but had changed his mind when the court was taking his plea in court. Defendant stated that he told the judge, "Your Honor, I do not want this deal." The judge asked defendant if he wanted to speak to his attorney, and he said yes. When defendant told his attorney that he did not want to take the deal, counsel tried to dissuade defendant and told him he could not back out because he had already signed the plea form. Based on what counsel told him, defendant felt he had to go through with the plea.

Before the second recess, defendant stated that he was emotional and told the judge, "Man, I don't want this deal." The judge sent defense counsel back to talk with defendant. Defense counsel told defendant that he had to stop doing this, and he was going to "piss the judge off." At that time, defendant was taking pain medication, which he believed affected his mental status.

Defendant admitted that he had represented himself in another case a month prior to being arrested in this case, and had entered into a plea agreement. Pursuant to that

agreement, he was released from custody for time served. Defendant admitted that he had previously asked the court for a continuance and said that if he could not get one, he was going to ask to withdraw his plea. Defendant, however, stated, “that wasn’t the case.” He filed the motion to withdraw the guilty plea because he felt that the deal was “not good,” and he did not want the deal in the first place.

The trial court denied defendant’s motion to withdraw his plea. It found that defendant was a “very forceful, direct-speaking person” who had displayed sophistication in the court. The judge had personally observed defendant at the plea proceeding. Defendant did not look confused or coerced by his lawyer. Moreover, he did not hesitate in his responses during the taking of the plea. The court found that there was no evidence that defendant was confused or forced into the plea. The judge did not find defendant’s testimony to be credible.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
Acting P. J.

We concur:

RICHLI
J.

CODRINGTON
J.